In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 514

CESAR ARTURO RAMIREZ, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 1969. The petition for a writ of certiorari was filed on August 25, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 8 U.S.C. 1182(a)(9), which excludes from admission or from eligibility to receive a visa any alien "convicted of a crime involving moral turpitude", is void for vagueness under the due process clause.

STATEMENT

The facts are undisputed. Petitioner, a thirty-six year old married citizen of Ecuador, was admitted to the United States on February 23, 1965, as a non-immigrant visitor for pleasure. On August 17, 1965, he applied under Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) to the District Director of the Immigration and Naturalization Service for the District of Columbia for adjustment of status to that of a permanent resident. On February 17, 1966, he was notified that his application had been denied because he had gained entry into the United States by concealment of a material fact, *i.e.*, his marital status, and because he had failed to show ability to support his family in the United States and to establish good moral character.

Deportation proceedings were held before a Special Inquiry Officer on October 3, 1966, and petitioner was ordered deported for overstaying his visitor's visa. The privilege of voluntary departure was denied. The prior application for adjustment of status was not considered since, at that time, under the Immigration Act of October 3, 1965, natives of the Western Hemisphere were ineligible for adjustment of status. Petitioner appealed to the Board of Immi-

gration Appeals. In the interim, Congress passed the Immigration Act of November 2, 1966 (80 Stat. 1161) which preserved the validity of applications for adjustment of status filed by Western Hemisphere natives on or before December 1, 1965. The Board of Immigration Appeals thereupon reopened the case on petitioner's motion and remanded it to the Special Inquiry Officer for consideration of the application for adjustment of status. The Special Inquiry Officer found petitioner statutorily eligible for adjustment of status but denied the application in his discretion, citing petitioner's commission of adultery within the past five years, his deliberate misstatement of fact to the American Consul in Ecuador regarding his marital status, and the fact that petitioner had been convicted fifteen months earlier of obtaining money under false pretenses. He further noted that both petitioner's wife and his illegitimate child live in Ecuador.

On appeal, the Board of Immigration Appeals held petitioner ineligible by statute for adjustment of status since he had been convicted of a crime involving moral turpitude. This conviction made him ineligible to receive a visa under 8 U.S.C. 1182(a)(9) and thus disqualified him for adjustment of status under Section 245 of the Act. The evidence before the Special Inquiry Officer showed that petitioner, while working as a waiter in a restaurant, engaged in a scheme whereby he would receive cash to pay for a meal from a customer. He would then pocket the cash and use a credit card belonging to a third person to pay the restaurant bill. Petitioner had

used the credit cards of two different individuals to defraud the managers of two separate establishments. On January 20, 1967 he was convicted in the District of Columbia on two informations charging that he did "with intent to defraud, falsely represent", that he was authorized to use certain credit cards for the purpose of obtaining credit. The charges were laid under 22 D.C. Code 1301, titled "False pretenses."

Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit, contending that the statutory phrase "crime involving moral turpitude" is unconstitutionally vague and void as an indefinite delegation of authority to an administrative agency. The court, *per curiam*, affirmed the decision of the Board of Immigration Appeals on the authority of *Jordan* v. *DeGeorge*, 341 U.S. 223.

ARGUMENT

This Court in *Jordan* v. *DeGeorge*, *supra*, upheld the validity of the statutory predecessor to 8 U.S.C. 1251(a)(4) (*i.e.*, § 19(a) of the Immigration Act of 1917) which provided for the deportation of aliens twice convicted of any "crime involving moral turpitude." Although the issue of the vagueness of the statutory terms was not raised or argued by the parties, the Court in its opinion undertook an examination of this question in response to the elaborate discussion of the vagueness issue in the dissenting opinion. See 341 U.S. at 232. The majority concluded

that the challenged language sufficiently met the test of specificity. As the Court held (341 U.S. at 232):

> Whatever else the phrase "crime involving moral turpitude" may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. * * * We therefore decide that Congress sufficiently forewarned respondent that the statutory consequence of twice conspiring to defraud the United States is deportation.

The Court noted that the phrase had been "part of the immigration laws for more than sixty years" (*id.* at 229) and found that (*id.* at 227-228):

> The term "moral turpitude" has deep roots in the law. The presence of moral turpitude has been used as a test in a variety of situations, including legislation governing the disbarment of attorneys and the revocation of medical licenses. * * * [Footnotes omitted.]
>
> In deciding the case before the Court,[1] we look to the manner in which the term "moral turpitude" has been applied by judicial decision. Without exception, federal and state courts have held that a crime in which fraud is an ingredient involves moral turpitude. * * *
>
> This has been true in a variety of situations involving fraudulent conduct: obtaining goods under fraudulent pretenses, *Berman* v. *Reimer*, 123 F. 2d 331 (1941); * * * [other citations omitted]. In the state courts, crimes involving

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[1] The crime involved in *Jordan* was conspiracy to defraud the United States of taxes on distilled spirits.

fraud have universally been held to involve moral turpitude.[2]

Petitioner submits no persuasive argument for reconsideration of *Jordan*. His contention that the *Jordan* holding should be reexamined because of lack of full consideration of the vagueness issue by the Court is refuted by the *Jordan* opinion itself, which reflects a comprehensive analysis of the question. See also, *Boutilier* v. *Immigration and Naturalization Service*, 387 U.S. 118, 131 (Douglas, J. dissenting.) The lower courts have experienced no difficulty in applying the statute to offenses, like those here, involving fraud. *E.g.*, *Burr* v. *Immigration and Naturalization Service*, 350 F. 2d 87, 91 (C.A. 9), certiorari denied, 383 U.S. 915; *Hudson* v. *Esperdy*, 290 F. 2d 879 (C.A. 2), certiorari denied, 368 U.S. 918; *Yseung Chu* v. *Cornell*, 247 F. 2d 929, 938-939 (C.A. 9), certiorari denied, 355 U.S. 892; compare *Chaunt* v. *United States*, 364 U.S. 350, 353.

The crime of which petitioner was convicted comes squarely under the statement in *Jordan* that "crimes in which fraud was an ingredient have always been regarded as involving moral turpitude." The fact that the challenged language in this case appears in a provision of the statute dealing with exclusion rather than with deportation as in *Jordan* does not aid petitioner. Indeed, this places him in a category more akin to an alien who is outside the country and seeking admission *prior to entry* and is therefore less

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[2] One of the stated decisions favorably noted in *Jordan* found moral turpitude in the offense of obtaining money and property by false and fraudulent pretenses (341 U.S. at 228 n. 13).

entitled to the "constitutional requirement of fair warning." See *Boutilier* v. *Immigration and Naturalization Service*, 387 U.S. 118, 123-124.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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